

## **2013 DRAFTING REQUEST**

### **Bill**

Received: **2/6/2014** Received By: **agary**  
Wanted: **As time permits** Same as LRB:  
For: **David Craig (608) 266-3363** By/Representing: **Nathan Schacht**  
May Contact: Drafter: **agary**  
Subject: **Fin. Inst. - banking inst.** Addl. Drafters:  
**Fin. Inst. - miscellaneous** Extra Copies: **FFK**

Submit via email: **YES**  
Requester's email: **Rep.Craig@legis.wisconsin.gov**  
Carbon copy (CC) to: **aaron.gary@legis.wisconsin.gov**

---

### **Pre Topic:**

No specific pre topic given

---

### **Topic:**

Barring action against a financial institution based on certain promises or commitments that are not in writing

---

### **Instructions:**

See attached

---

### **Drafting History:**

| <u>Vers.</u> | <u>Drafted</u>     | <u>Reviewed</u>       | <u>Typed</u>          | <u>Proofed</u> | <u>Submitted</u>     | <u>Jacketed</u> | <u>Required</u> |
|--------------|--------------------|-----------------------|-----------------------|----------------|----------------------|-----------------|-----------------|
| /P1          | agary<br>2/13/2014 | kfollett<br>2/6/2014  | rschluet<br>2/6/2014  | _____          | sbasford<br>2/6/2014 |                 |                 |
| /P2          | agary<br>2/25/2014 | kfollett<br>2/14/2014 | rschluet<br>2/14/2014 | _____          | lparisi<br>2/14/2014 |                 |                 |
| /1           |                    | kfollett              | rschluet              | _____          | mbarman              | sbasford        |                 |

Vers. Drafted

Reviewed  
2/25/2014

Typed  
2/25/2014

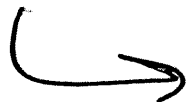
Proofed  
\_\_\_\_\_

Submitted  
2/25/2014

Jacketed  
2/25/2014

Required

FE Sent For:



Not  
Needed

<END>

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| /P2          | agary<br>2/25/2014 | kfollett<br>2/14/2014 | rschluet<br>2/14/2014 | _____          | lparisi<br>2/14/2014 |                 |                 |
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| /P2          |                    | kfollett<br>2/14/2014 | rschluet<br>2/14/2014 | _____          | lparisi<br>2/14/2014 |                 |                 |

FE Sent For:

<END>

1/15/14  
2/25  
2/25/14

**2013 DRAFTING REQUEST****Bill**

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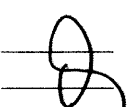
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**Instructions:**

See attached

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| /P1          | agary<br>2/6/2014 | kfollett<br>2/6/2014 | rschluet<br>2/6/2014 |  | sbasford<br>2/6/2014 |                 |                 |
| FE Sent For: |                   | 1P2/5F<br>2/14       | 1P2/5F<br>2/14       | 2/14  |                      |                 |                 |

<END>

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|--------------|----------------|-----------------|---|----------------|------------------|-----------------|-----------------|
| /P1          | agary          | 1P15F<br>2/6    | <br>2614 | _____<br>_____ |                  |                 |                 |

FE Sent For:

<END>

**Gary, Aaron**

---

**From:** Schacht, Nathan  
**Sent:** Thursday, February 06, 2014 8:52 AM  
**To:** Gary, Aaron  
**Subject:** Short Bill Draft needed ASAP

**Importance:** High

Aaron,

Short bill draft below that we need urgently. The only change to the below language is that we'd like credit unions added to the definition of financial institutions.

When do you think you can have the P1 to me?

Thanks in advance,

Nate

**Section 1.** 241.02(3) of the statutes is created to read:

241.02(3). An action shall not be brought against a financial institution on or in connection with any of the following promises or commitments of the financial institution unless the promise or commitment is in writing, sets forth relevant terms and conditions and is signed with an authorized signature by the financial institution:

- (a) a promise or commitment to lend money, grant or extend credit, or make any other financial accommodation.
- (b) a promise or commitment to renew, extend, modify, or permit a delay in repayment or performance of a loan, extension of credit, or other financial accommodation.
- (4) A promise or commitment by a financial institution described in subsection (3) may not be enforced under the doctrine of promissory estoppel.
- (5) Subsection (3) does not apply to credit transactions that are subject to chs. 421 to 427.
- (6) As used in subsection (3), "financial institution" means a bank, savings bank or saving and loan association organized under the laws of this state, another state, or the United States, and any affiliate of such a bank, savings bank, or savings and loan association. "Affiliate" of a bank, savings bank, or savings and loan association means



a business entity that controls, is controlled by, or is under common control with a bank, savings bank, or savings and loan association.

**Section 2. Initial Applicability.**

(1) Lawsuits concerning credit agreements and related documents. This act first applies to actions commenced on the effective date of this subsection

**Nathan Schacht**

Office of State Representative David Craig

83rd Assembly District

P: (608) 266-3363

E: [nathan.schacht@legis.wi.gov](mailto:nathan.schacht@legis.wi.gov)

NOTE: Emails sent to and from this account may be subject to open records requests and should not be considered private.



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-4212/P1  
ARG: kjf

in  
2/6

TODAY

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

Gen

- 1 **AN ACT ...; relating to:** prohibiting certain actions against financial institutions  
2 for promises or commitments that are not in writing.

---

***Analysis by the Legislative Reference Bureau***

X  
S This bill prohibits any person from bringing an action against a financial institution or its affiliate on or in connection with a promise or commitment to lend money, extend credit, or make any other financial accommodation, or to renew, extend, modify, or permit a delay in repayment or performance of a loan, extension of credit, or other financial accommodation, unless the promise or commitment: 1) is in writing; 2) sets forth relevant terms and conditions; and 3) is signed with an authorized signature by the financial institution or its affiliate. Under the bill, a financial institution is a state-chartered or federally chartered bank, savings bank, saving and loan association, or credit union and its affiliate is a business entity that controls, is controlled by, or is under common control with the financial institution. The bill does not apply to credit transactions that are subject to the Wisconsin Consumer Act.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

- 3 **SECTION 1.** 241.02 (3) of the statutes is created to read: ✓  
4 241.02 (3) (a) In this subsection: ✓

✓  
1 1. "Affiliate," with respect to a bank, savings bank, savings and loan  
2 association, or credit union, means a business entity that controls, is controlled by,  
3 or is under common control with the bank, savings bank, savings and loan  
4 association, or credit union.

5 2. "Financial institution" means a bank, savings bank, saving<sup>s</sup> and loan  
6 association, or credit union organized under the laws of this state, another state, or  
7 the United States.

8 (b) No action may be brought against a financial institution or its affiliate on  
9 or in connection with any of the following promises or commitments of the financial  
10 institution or its affiliate unless the promise or commitment is in writing, sets forth  
11 relevant terms and conditions, and is signed with an authorized signature by the  
12 financial institution or its affiliate:

13 1. A promise or commitment to lend money, grant or extend credit, or make any  
14 other financial accommodation.

15 2. A promise or commitment to renew, extend, modify, or permit a delay in  
16 repayment or performance of a loan, extension of credit, or other financial  
17 accommodation.

\*\*\*\*NOTE: Because an affiliate is not a chartered financial institution, I have kept  
these entities separate in the definitions and in par. (b). I believe there is no substantive  
change from the proposed language.

18 (c) A promise or commitment by a financial institution or its affiliate described  
19 in par. (b) may not be enforced under the doctrine of promissory estoppel.

XXXXNOTE: Although some courts have concluded that the statute of frauds does not  
preclude an equitable claim under the doctrine of promissory estoppel, par. (b) contains  
a flat prohibition against bringing any action. This is broader than the common law  
statute of frauds, which renders the oral agreement void and unenforceable. It seems to  
me that par. (c) is unnecessary in light of the broad language of par. (b).

X

1 (d) This subsection does not apply to credit transactions that are subject to chs.  
2 421 to 427.

3 **SECTION 2. Initial applicability.**

4 (1) This act first applies to actions commenced on the effective date of this  
5 subsection.

\*\*\*\*NOTE: This initial applicability provision presents something of a "Catch-22," since it states that the statute providing that "No action may be brought" first applies to actions that are brought on the effective date. However, I believe the intent is clear enough and I cannot think of another way to write the initial applicability provision that is substantively equivalent, since an applicability to any promise or commitment made on the effective date alters the timing and substantive effect of the provision.

6 (END)

**Gary, Aaron**

---

**From:** Schacht, Nathan  
**Sent:** Thursday, February 13, 2014 2:47 PM  
**To:** Gary, Aaron  
**Cc:** Arthur, Jackie  
**Subject:** RE: Short Bill Draft needed ASAP

Aaron,

A few changes to LRB-4212/P1.

- 1- Just want to see why the consumer act reference was not included. If you don't think it's necessary I'll trust your judgment on that but just wanted to make sure you didn't miss it.
- 2- Let's change (wherever it appears) "promises and commitments" to "offers, promises, agreements or commitments".
- 3- Add "and delivered to the party seeking to enforce the offer, promise, agreement or commitment" after "or its affiliate" on line 13, page 2.

No changes need to be made to the issues you mentioned in your drafter's notes.

Also, my last day in Rep. Craig's office is tomorrow. Please direct any questions to my colleague Jackie Arthur.

Best,  
Nate

Nathan Schacht  
Office of State Representative David Craig

---

**From:** Schacht, Nathan  
**Sent:** Thursday, February 06, 2014 8:52 AM  
**To:** Gary, Aaron  
**Subject:** Short Bill Draft needed ASAP  
**Importance:** High

Aaron,

Short bill draft below that we need urgently. The only change to the below language is that we'd like credit unions added to the definition of financial institutions.

When do you think you can have the P1 to me?

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Nate

**Section 1.** 241.02(3) of the statutes is created to read:



State of Wisconsin  
2013 - 2014 LEGISLATURE

in  
2/13



LRB-4212/04 P2  
ARG:kjf:rs

wanted  
by 2/17

TRMK

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

- 1 AN ACT to create 241.02 (3) of the statutes; relating to: prohibiting certain  
2 actions against financial institutions for offers, promises, agreements, or commitments that are not  
3 in writing.

*Analysis by the Legislative Reference Bureau*

This bill prohibits any person from bringing an action against a financial institution or its affiliate on or in connection with a promise or commitment to lend money, extend credit, or make any other financial accommodation, or to renew, extend, modify, or permit a delay in repayment or performance of a loan, extension of credit, or other financial accommodation, unless the promise or commitment: 1) is in writing; 2) sets forth relevant terms and conditions; and 3) is signed with an authorized signature by the financial institution or its affiliate. Under the bill, a financial institution is a state-chartered or federally chartered bank, savings bank, savings and loan association, or credit union and its affiliate is a business entity that controls, is controlled by, or is under common control with the financial institution. The bill does not apply to credit transactions that are subject to the Wisconsin Consumer Act.

insert  
ANAL-A

insert  
ANAL

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

4

SECTION 1. 241.02 (3) of the statutes is created to read:

insert  
ANAL-C

241.02 (3) (a) In this subsection:

1. "Affiliate," with respect to a bank, savings bank, savings and loan association, or credit union, means a business entity that controls, is controlled by, or is under common control with the bank, savings bank, savings and loan association, or credit union.

2. "Financial institution" means a bank, savings bank, savings and loan association, or credit union organized under the laws of this state, another state, or the United States.

(b) No action may be brought against a financial institution or its affiliate on or in connection with any of the following <sup>offers,</sup> promises <sup>, agreements,</sup> or commitments of the financial institution or its affiliate unless the <sup>offer,</sup> promise <sup>, agreement,</sup> or commitment is in writing, sets forth relevant terms and conditions, and is signed with an authorized signature by the financial institution or its affiliate. <sup>insert 2-13</sup>

1. A promise <sup>offer,</sup> or commitment to lend money, grant or extend credit, or make any other financial accommodation. <sup>, agreement,</sup>

2. A promise or commitment to renew, extend, modify, or permit a delay in repayment or performance of a loan, extension of credit, or other financial accommodation.

\*\*\*NOTE: Because an affiliate is not a chartered financial institution, I have kept these entities separate in the definitions and in par. (b). I believe there is no substantive change from the proposed language.

(c) A promise or commitment by a financial institution or its affiliate described in par. (b) may not be enforced under the doctrine of promissory estoppel.

\*\*\*NOTE: Although some courts have concluded that the statute of frauds does not preclude an equitable claim under the doctrine of promissory estoppel, par. (b) contains a flat prohibition against bringing any action. This is broader than the common law statute of frauds, which renders the oral agreement void and unenforceable. It seems to me that par. (c) is unnecessary in light of the broad language of par. (b).

1 (d) This subsection does not apply to credit transactions that are subject to chs.  
2 421 to 427.

3 **SECTION 2. Initial applicability.**

4 (1) This act first applies to actions commenced on the effective date of this  
5 subsection.

6 ~~\*\*\*\*NOTE: This initial applicability provision presents something of a "Catch-22,"~~  
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(END)



**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4212/P2ins  
ARG:.....

1

2           **INSERT ANAL-A:**

    (no ¶) an offer, promise, agreement,

3           **INSERT ANAL-B:**

    (no ¶) offer, promise, agreement,

4           **INSERT ANAL-C:**

    (no ¶) and delivered to the party seeking to enforce the offer, promise, agreement, or  
            commitment

5

6

7           **INSERT 2-13:**

8      (no ¶) and delivered to the party seeking to enforce the offer, promise, agreement, or  
9      commitment

10

11



State of Wisconsin  
2013 - 2014 LEGISLATURE

in  
2/25



LRB-4212/PZ /  
ARG:kjf:rs

TODAY

RMK

Per Jackie, wants /1

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

No changes

Regen

- 1 **AN ACT to create** 241.02 (3) of the statutes; **relating to:** prohibiting certain  
2 actions against financial institutions for offers, promises, agreements, or  
3 commitments that are not in writing.

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***Analysis by the Legislative Reference Bureau***

This bill prohibits any person from bringing an action against a financial institution or its affiliate on or in connection with an offer, promise, agreement, or commitment to lend money, extend credit, or make any other financial accommodation, or to renew, extend, modify, or permit a delay in repayment or performance of a loan, extension of credit, or other financial accommodation, unless the offer, promise, agreement, or commitment: 1) is in writing; 2) sets forth relevant terms and conditions; and 3) is signed with an authorized signature by the financial institution or its affiliate and delivered to the party seeking to enforce the offer, promise, agreement, or commitment. Under the bill, a financial institution is a state-chartered or federally chartered bank, savings bank, savings and loan association, or credit union and its affiliate is a business entity that controls, is controlled by, or is under common control with the financial institution. The bill does not apply to credit transactions that are subject to the Wisconsin Consumer Act.

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8 the United States.

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10 or in connection with any of the following offers, promises, agreements, or  
11 commitments of the financial institution or its affiliate unless the offer, promise,  
12 agreement, or commitment is in writing, sets forth relevant terms and conditions,  
13 and is signed with an authorized signature by the financial institution or its affiliate  
14 and delivered to the party seeking to enforce the offer, promise, agreement, or  
15 commitment:

16           1. An offer, promise, agreement, or commitment to lend money, grant or extend  
17 credit, or make any other financial accommodation.

18           2. An offer, promise, agreement, or commitment to renew, extend, modify, or  
19 permit a delay in repayment or performance of a loan, extension of credit, or other  
20 financial accommodation.

21           (c) An offer, promise, agreement, or commitment by a financial institution or  
22 its affiliate described in par. (b) may not be enforced under the doctrine of promissory  
23 estoppel.

24           (d) This subsection does not apply to credit transactions that are subject to chs.  
25 421 to 427.

1            **SECTION 2. Initial applicability.**

2           (1) This act first applies to actions commenced on the effective date of this  
3       subsection.

4 (END)

**Basford, Sarah**

---

**From:** Craig, David  
**Sent:** Tuesday, February 25, 2014 2:42 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -4212/1 Topic: Barring action against a financial institution based on certain promises or commitments that are not in writing

Please Jacket LRB -4212/1 for the ASSEMBLY.